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Supreme Court of the United States

October Term, 1968

No. [redacted] 145

DAVID LEE WILLIAMS, TERRY DONALD MARTIN and DONNA LEE COOK,

Petitioners,

versus

United States

~~STATE OF LOUISIANA~~,

Respondent.

Petition for Writ of Certiorari to Review Decision of the United States Court of Appeals for the Fifth Circuit, No. 23,517.

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SUPREME COURT OF THE UNITED STATES

October Term, 1967.

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Petitioners,

versus

STATE OF LOUISIANA,

Respondent.

Petition for Writ of Certiorari to Review Decision of the United States Court of Appeals for the Fifth Circuit, No. 23,517.

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners, David Lee Williams, Terry Donald Martin and Donna Lee Cook pray that a writ of certiorari issue to the United States Court of Appeal for the Fifth Circuit to review the judgment of that Court entered on the 15th day of March, 1968, rehearing denied May 2, 1968. By virtue of said judgment petitioners were sentenced to serve penitentiary sentences ranging from three to twenty years based upon alleged violations of the Federal Kidnapping Statute discussed below. The proceedings below are entitled: *United States of America vs. David Lee Williams, Terry Donald Martin and Donna Lee Cook,*

No. 23517 of the docket of the Court of Appeals for the Fifth Circuit.

CITATIONS TO THE OPINION BELOW.

The Opinion below is as yet unreported and is to be found in the Appendix.

JURISDICTIONAL STATEMENT.

The opinion of the Fifth Circuit Court of Appeals was rendered March 15, 1968 and rehearing denied May 2, 1968. Jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED.

1. Were petitioners deprived of due process of law by reason of the admission into evidence of a highly inculpatory statement by one of the petitioners made a month after his arrest without the laying of a predicate as to the voluntary nature of said statement out of the presence of the jury?

2. Were petitioners denied due process of law by virtue of the highly improper questions and remarks during voir dire examination of prospective jurors?

3. Were petitioners denied due process by virtue of the highly inflammatory and emotional appeals made to the jury during oral argument?

STATUTES INVOLVED.

The Due Process Clause of the Fifth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE.

This case involved a prosecution under Title 18, U.S.C. Sec. 1201(a). The three appellants were charged with having kidnapped a young woman, Carol Ann McGill and taken her from Port Arthur, Texas to the outskirts of New Orleans, La. and attempted to hold her there for the purpose of having her engage in prostitution.

The alleged victim, Carol Ann McGill, was a former bar maid who, by her own admission, had voluntarily engaged in prostitution (R. 64). She had lived openly with the defendant Williams as his wife, had also passed him off as her husband to her grandparents in Port Arthur and had spent the night there with him, in the connected apartment, all to the full knowledge of said grandparents (R. 48, 49, 58, 84). The prosecutrix had previously gone with defendant Williams voluntarily to Louisiana, where she had practiced prostitution and she had been permitted to return to Texas to the home of her grandparents so as to be with her children for the Christmas holidays (R. 78 through 85).

On the trip in question, when she was allegedly abducted, she made a long distance call en route and told her grandfather to call off the police search for her because she was all right (R. 93).

When she arrived in Louisiana at the Bissonet Apartments she had sexual intercourse with the defendant Williams, who was drunk, as were the other two defendants. She simply ran out of the apartment while the others were in a drunken stupor (R. 95).

Thus, while we are not specifically urging the sufficiency, of the evidence, the above facts are necessary in order to show the highly equivocal nature of the background evidence as to an actual kidnapping. This background is necessary to demonstrate the highly prejudicial effect of certain evidence which was admitted and certain inflammatory remarks made to the jury, noted below.

The most prejudicial aspect of the case was the action of the District Court in failing to require an inquiry out of the presence of the jury as to the voluntary nature of an obviously prejudicial and highly incriminatory statement made by the defendant, Williams, *more than a month after he was arrested, and while in custody in Beaumont.* This occurred in the following manner:

Mike Curnan, a Deputy from the Sheriff's office in Jefferson County, Texas, was a Government witness who was put on the stand for the sole purpose of stat-

ing that, while in custody there, the defendant Williams ADMITTED HE WAS A PIMP. Thus (R. 158):

Q. Do you know the defendant, David Williams?
A. Yes, sir.
Q. Do you know who (sic) his occupation is?
A. Yes, sir.
Q. What is it?
A. He's a pimp.
Q. How do you know that?
A. He told me.

MR. ANDREWS:
May it please the Court?
Counsel objects to this line of questioning since the time and necessary predicate has not been laid as to what this officer is testifying to.

THE COURT:
Objection overruled.

Q. When did he tell you this?
A. On February 9th of 1966.
Q. Did he voluntarily state this?
A. Yes, sir, he did.
Q. He was under no force, duress or anything else, just voluntarily made the statement?
A. Just a voluntary statement, yes, sir.

MR. McADAMS:
I pass the witness.

THE COURT:

Anything further?

CROSS EXAMINATION.

QUESTIONS BY ANDREWS:

Q. Did Mr. Williams walk up to you and voluntarily tell you he was a pimp?

A. No, sir, he didn't.

Q. Is he in the custody, in the Jefferson County jail?

A. Yes, he was.

Q. Is he in solitary custody there?

A. I don't know what kind of custody he's in up there.

Q. How did you have occasion to gain access to him?

A. I went up to the jail and brought him out, brought him to my office to fingerprint and mug him.

Q. You are a fingerprint technician?

A. Yes, sir.

Q. Do you recall the surrounding talk between you all prior to this alleged admission on the part of Williams?

A. Yes, I remember it.

Q. Who first started talking?

A. I did.

Q. What if anything did you say?

A. I asked him his name first.

Q. Did he reply?

A. Yes, sir.

Q. What did he reply?

A. He told me he was David Lee Williams.

Q. What is the next thing, if anything, took place?

A. I think I asked him what color did he call his hair, what color were his eyes, general description?

Q. I have no further questions, Your Honor.

DELIBERATE PLAN TO SUPPLY ESSENTIAL EVIDENCE BY ILLEGAL MEANS.

The Court correctly charged the jury that an essential element of the offense, which the government must prove, was that she was abducted and held against her will for the purpose of forcing her into prostitution. Specifically, on the third required element, the Court charged (R. 252):

> "The third element which reads: 'carried away and held for ransom or reward or for any other reason'. In this case it would be *for the purpose of forcing the complaining witness Carol Ann McGill into prostitution against her will.*" (Emphasis added.)

The Government well knew, therefore, that part of its burden of proof was a strong showing that the abduction was part of a plan to force the prosecutrix into prostitution. With the above evidence in mind, therefore, the Government clearly recognized that, with this sort of flighty, wild young woman as its sole witness *as to the purpose of the abduction*, and to dis-

tinguish its case from just another brawl between a prostitute and her man, it was necessary to get something more sinister before the jury. It was necessary to get the "pimp" image clearly before the jury. This campaign to inject the "pimp" image before the jury began at the very outset, during the voir dire examination.

AN HONEST MISTAKE?

On page 19 of its brief to the Fifth Circuit the Government sought to excuse the highly improper voir dire tactics as being the "honest effort of an inexperienced prosecuting attorney to secure fair and unbiased jurors *for the appellants as well as the Government*". (Emphasis added.)

This excuse appears as thin as a high style model on a Metrecal diet. Let us see just what happened:

The prosecutor opened his *voir dire examination* with a thinly disguised speech in which he stated (R. 7):

> "This is a case which you will hear today, Ladies and Gentlemen, and *it is a case which I think involves one of the most sinister diabolic plans and it will probably have language* to appear in the testimony*****"

Here there was an objection and motion for a mistrial, which was denied, with no cautionary advice by the Court as to the impropriety of making an

opening statement during voir dire or the impropriety of a prosecutor expressing his personal estimate of the "diabolical" nature of the case.

There follows one of many questions, which the Government in its brief assures us was simply an "honest effort" to get jurors who would be fair to the defense as well as to the Government (R. 7):

> "MR. RUTH:
>
> Ladies and gentlemen, I am going to direct this question to you—to this panel particularly because there are ladies on the panel. ARE THERE ANY OF YOU WHOSE SENSITIVITY IS SO GREAT THAT IF YOU WERE TO HEAR THE WORDS 'PIMP', 'PROSTITUTE', 'PROSTITUTION' 'RAPE' AND WORDS OF THAT NATURE, WOULD IT INCENSE YOUR SENSITIVITY TO SUCH AN EXTENT THAT YOU COULD NOT RENDER A FAIR AND IMPARTIAL VERDICT IN THIS MATTER TO BOTH THE UNITED STATES AND TO THE DEFENDANTS?"

There was a vigorous objection by the defense as to the form of this question, which was promptly overruled, without comment or caution by the Court (R. 8).

Encouraged by lack of any reprimand, the prosecutor proceeded to repeat the above question in a milder, paraphrase form (R. 8, 9) and then started

to make a full blown speech as to what the evidence would show. Here he was finally stopped from making a speech by the Court (R. 10).

IMMEDIATELY THEREAFTER THE PROSECUTOR RETURNED TO HIS "PIMP" QUESTIONS ON VOIR DIRE. THUS (R. 10):

"MR. RUTH:

Ladies and gentlemen, if the evidence as introduced here to show that one of the defendants, David Lee Williams, is a self admitted pimp, would that in any sense affect you giving a fair and impartial verdict to either the Government or Mr. Williams in this matter?

MR. ANDREWS:

MAY IT PLEASE THE COURT, COUNSEL AGAIN MOVES AND RULES FOR A MISTRIAL. THE ATTORNEY FOR THE UNITED STATES HAS GONE FAR BEYOND THE SCOPE AND PURPOSE ON VOIR DIRE TO EMPANEL A JURY."

THE COURT, HOWEVER, REBUKED, NOT THE PROSECUTOR BUT DEFENSE COUNSEL. Thus (R. 10):

"THE COURT:

Just make your objection, Mr. Andrews.

MR. ANDREWS:

Counsel objects, Your Honor, and moves for a mistrial.

THE COURT:

You've already said that. You only have to make your objections, not your argument. All right, the objection is overruled. Let's see if we can proceed."

Still unrebuked, the prosecutor for the third time launched into his "pimp questions" on voir dire (R. 11).

When defense counsel sought to object again, the Court, instead of correcting the prosecutor, *simply shut off further objections by directing that further objection would be unnecessary because the defense would be given the benefit of a continuing objection* (R. 12).

Thereupon, the unimpeded prosecutor continued along the same line until finally, when he tried to use the same type of voir dire question as to the former life of the prosecutrix as a prostitute, the Court became weary of this unorthodox procedure and made him desist (R. 13).

Other examples of inflammatory and prejudicial remarks of the same nature, during argument, are noted in a separate assignment of error below. But the foregoing samples are mentioned here to show that the injection of the "pimp" image was no mere accident chargeable to an overheated and inexperienced prosecutor. On the contrary, these tactics were adopted deliberately, from the opening gun and

were pursued assiduously and boldly with the permission of an overly indulgent Court.

Quite obviously, the probing of the prospective jurors as to whether their sensitivity to the word "pimp" would tend to prejudice them *so as to prevent their giving the defense* a fair trial bespeaks a tender solicitude which is as counterfeit as a pink nine dollar bill.

REASONS FOR GRANTING THE WRIT.

What was done here by the trial Court quo ad the "pimp" admission was clearly in violation of the rule laid down by this Court in *Jackson v. Denno,* 378 U.S. 368, 84 S.Ct. 1774, 12 L. Ed. 2d 908 (1964). The fallacy of the trial Court's action, and the sanction given to same by the Fifth Circuit, lies in the assumption: (a) That simply because this case was tried before the effective date of the "four warnings" rule of *Miranda,* only a token inquiry need be made as to voluntariness AND WITHOUT WITHDRAWING THE JURY; (b) That a highly incriminatory statement, made by an accused after being in custody for over a month was not to be treated as a confession or incriminating statement at all, but was to be equated with such routine matters as the taking of "mug shots", fingerprints, etc.

Several pre-*Miranda* cases make clear that, since *Jackson v. Denno, supra,* decided in 1964, the requirement of a serious inquiry, out of the presence of the jury, is essential to due process. Among these we

find *Luck v. United States*, 348 F. 2d 763, decided by the U.S. Court of Appeals for the District of Columbia in 1965. *Luck, supra,* was with us long before *Miranda* burst upon the scene. In the *Luck* case the Court declared (at page 766, footnote 2, of 348 F. 2d):

> "The frivolity of the objection *was not established simply by the Court's canvassing the police officer's opinion as to the voluntariness of the admission.*" (Emphasis added.)

That is precisely what was done here. As noted above, when the defense objected to the testimony of the Deputy Sheriff as to the purported "pimp" admission, the trial Judge simply asked the Deputy a few perfunctory questions as to whether the statement was made voluntarily. Moreover, everything was done in the presence of the jury and the accused was forced either to waive his rights against self-incrimination by taking the stand to rebut the testimony of the officer or bear the obviously prejudicial effect of said testimony by remaining silent.

What was done in the instant case was a "throwback", to what might have been due process before the Civil War but cannot be treated as such in modern times. The Fifth Circuit here blandly assumes that, because *Miranda* was not applicable per se, it was permissible to revert to a somewhat medieval inquiry as to voluntariness. Such errors of thinking and mechanical approaches to the problems presented by in-custody interrogations by police, was interdicted by this Court in *Davis v. North Carolina*, 384

U.S. 737, 16 L. Ed. 2d 895, 86 S. Ct. 1761 (1966). There, on the same day that the Johnson theory of non-retroactivity of *Miranda* was enunciated, Your Honors declared (at page 897 of 16 L. Ed. 2d):

> "As we pointed out in Johnson, however, the nonretroactivity of the decision in Miranda *does not affect the duty of courts to consider claims that a statement was taken under circumstances which violate standards of voluntariness which had begun to evolve long prior to our decisions in Miranda and Escobedo v. Illinois*, 378 U.S. 478, 12 L. Ed. 2d 977, 84 S. Ct. 1738." (Emphasis added.)

In the instant case, after noting that the *Miranda* rules are inapplicable because of the time factor, the Fifth Circuit disposes of the entire issue of admissibility of this highly prejudicial inculpatory, in-custody, admission in one sentence. Thus, on page 3 of its opinion (See Appendix) the Fifth Circuit declares:

> "Since Williams' statement was totally voluntary and made during routine prison fingerprinting, 'mugging' and identification, his statement is admissible without the necessity of the customary constitutional warnings, such as those stated in *Escobedo. See United States v. Feinberg*, 2 Cir., 1967, 383 F. 2d 60, 69; *United States v. Kelly*, 2 Cir., 1932, 55 F. 2d 67; and *Schmerber v. State of California*, 384 U. S. 757, 763, 764, 86 S. Ct. 1826, 1832 (1966)."

Here the "weasel words" are "TOTALLY VOLUNTARY". We have quoted above the entire evidence produced as to the nature of the admission and its purported voluntariness. Clearly, this perfunctory inquiry by the Court, in the presence of the jury, cannot be equated with a serious inquiry as to voluntariness. Aside from the fact that no hearing was had out of the presence of the jury, and required in *Denno, supra* and reechoed in *Luck, supra,* the evidence upon which the conclusion of the trial court was reached is reviewable on appeal and by this Court. See *Smith v. United States,* 268 F. 2d 416 (Ninth Circuit, 1959).

Can anyone seriously believe that this accused, after being in custody for over a month and awaiting trial on a kidnapping charge tied in inextricably with a prostitution objective, would casually admit that he was a "pimp"? If made at all, the statement must have been made jocosely but it was used most seriously by the prosecution in closing argument when the United States Attorney told the jury (R. 227):

> "Now on this issue, what was her motive? There is a self-admitted pimp right there. He admitted it. You heard Mr. Curnan get on the stand and say 'I asked him what his occupation was'. He had the gall to admit he was a pimp."

INFLAMMATORY REMARKS.

In addition to the highly unfair tactics pursued during voir dire examination and noted above, the Gov-

ernment continued to indulge in highly inflammatory argument to the very end of the case. These remarks are noted particularly at R. 230, et seq. and the prosecutor asked the jury:

> "Where can this girl turn now? You ever think what you are putting that girl back into, *are you condemning her to a life of prostitution*" etc. See also argument at R. 248.

This was not only a rank appeal to emotions but was a grossly inaccurate description of the position of the parties. We are dealing here with a woman who had admittedly pursued a life of prostitution for years AND WAS CONSIDERING MARRYING THE MAN NOW CHARGED AS HER ABDUCTOR. (R. 217, 218.)

CONCLUSION.

The net effect of injecting this "pimp" image via the confession or admission was to supply the key evidence as to the purpose of the trip back to Louisiana. Save for that purported confession the jury had nothing before it but the unsupported word of an ingenious prostitute who was drawing military subsistence payments from one fiancee while toying with marrying the accused.

For the foregoing reasons we respectfully submit that a writ of certiorari should issue herein, that the

judgment below should be reversed and a new trial ordered.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, G. Wray Gill, Sr., of counsel for petitioner in the foregoing application for certiorari, am a member in good standing of the bar of the Supreme Court of the United States and I certify that copies of the foregoing petition have been served upon the Solicitor General of the United States and the United States Attorney for the Eastern District of Texas, Beaumont Division by mailing same, postage prepaid and properly addressed to their respective offices on the ... day of May, 1968.

May ..., 1968

G. W. GILL, SR.

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23517

DAVID LEE WILLIAMS, TERRY DONALD MARTIN and DONNA LEE COOK,

Appellants,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Eastern District of Texas.

(March 15, 1968.)

Before COLEMAN, AINSWORTH and DYER, Circuit Judges.

PER CURIAM: Appellants Williams, Martin and Cook were found guilty by a jury of kidnapping Carol Ann McGill and transporting her in interstate commerce from Port Arthur, Texas, to Metairie, Louisiana. Williams and Martin received twenty-year sentences and Cook five years.

Carol Ann McGill, age 19, admittedly a former prostitute, was forcibly taken from her grandparents' home at Port Arthur, Texas, where she resided with them and her two young children, shortly after

midnight January 1, 1965. She had worked as a prostitute for appellant Williams prior to this time. On the night in question, Williams picked her up from a couch where she was sleeping and after much screaming, crying and protesting, and with the assistance of appellants Martin and Cook, the girl was dragged into an automobile. They drove all night to Metairie, Louisiana, to an apartment and when appellants fell asleep, the victim fled and summoned police.

Insufficiency of the evidence to warrant the jury's verdict is not at issue, but appellants assign as error the admission by the trial court of evidence by Texas Deputy Sheriff Curnan that appellant Williams admitted to him that he was a pimp. Also assigned as error is the alleged inflammatory and prejudicial conduct of the prosecutor during voir dire examination and during the trial. We find no merit in either contention.

When appellants were arrested, they were returned to Texas and incarcerated in the Jefferson County, Texas, Prison where Deputy Sheriff Curnan was employed as a fingerprint technician. Curnan testified that during routine fingerprinting, "mugging," and obtaining vital statistics information appellant Williams voluntarily told him he was a pimp. Objection was made that no predicate had been laid by the prosecution for the admission of this evidence, which is said to be in violation of *Escobedo v. State of Illinois*, 378 U. S. 478, 84 S. Ct. 1758 (1964) and *Miranda*

v. State of Arizona, 384 U. S. 436, 86 S. Ct. 1602 (1966). *Miranda* is not applicable as the trial of these defendants occurred on February 23, 1966, and the *Miranda* principles are available only to persons whose trials began after June 13, 1966. See *Johnson v. State of New Jersey*, 384 U. S. 719, 86 S. Ct. 1772 (1966). Since Williams' statement was totally voluntary and made during routine prison fingerprinting, "mugging" and identification, his statement is admissible without the necessity of the customary constitutional warnings, such as these stated in *Escobedo*. See *United States v. Feinberg*, 2 Cir., 1967, 383 F. 2d 60, 69; *United States v. Kelly*, 2 Cir., 1932, 55 F. 2d 67; and *Schmerber v. State of California*, 384 U. S. 757, 763, 764, 86 S. Ct. 1826, 1832 (1966). The evidence is quite clear that Williams had been a pimp for both Carol Ann McGill and another girl.

We also find no merit in the argument about the prosecutor's conduct during the voir dire examination and during the trial. We have carefully reviewed this assignment of error, and a fair reading of the record does not convince us that there was error or abuse which affected appellants' substantial right to a fair trial or would justify reversal. *Leary v. United States*, 5 Cir., 1967, 383 F. 2d 851. The evidence of appellants' guilt in this sordid and violent drama was overwhelming and indisputable.

The judgment is AFFIRMED.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23517

DAVID LEE WILLIAMS, TERRY DONALD MARTIN and DONNA LEE COOK,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Eastern District of Texas.

(May 2, 1968.)

(PETITION FOR REHEARING)

Before COLEMAN, AINSWORTH and DYER, Circuit Judges.

PER CURIAM: It is ORDERED that appellants' petition for rehearing in this cause be, and the same is, hereby DENIED.

SUPREME COURT, U. S.

JUL 2 1969

JOHN F. DAVIS, CLERK

No. 145

In the Supreme Court of the United States

OCTOBER TERM, 1968

DAVID LEE WILLIAMS, TERRY DONALD MARTIN AND DONNA LEE COOK, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 145

DAVID LEE WILLIAMS, TERRY DONALD MARTIN AND DONNA LEE COOK, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Texas, petitioners were convicted of violating the federal kidnapping statute, 18 U.S.C. 1201(a). On March 4, 1966, petitioners Williams and Martin were sentenced to imprisonment for twenty years; petitioner Cook received a sentence of five years' imprisonment. The court of appeals affirmed *per curiam* (Pet. App.).

The victim of the abduction was a nineteen-year-old divorcee, Carol Ann McGill, who resided with her

children at her grandparents' home in Port Arthur, Texas (Tr. 62-64).[1] She met petitioner Williams while working in a local tavern. In early September 1965, she went to live with Williams in Houston and learned that he was a procurer for prostitutes. Williams prevailed upon Mrs. McGill to work for him. For the next few months, except for a period when she was incapacitated because of major surgery, she worked for Williams in various locations in Texas and Louisiana (Tr. 73-76). On one occasion when she decided to return home, Williams followed her. After being threatened and struck by Williams, Mrs. McGill decided to return with him to New Orleans (Tr. 76-79). For two weeks she worked for Williams in a brothel in Port Barre, Louisiana (Tr. 79). Then she was taken to New Orleans, where she lived with the three petitioners in an apartment rented by petitioner Martin (Tr. 80).

On December 25, 1965, Mrs. McGill prevailed upon Williams to drive her to her grandparents' home for the holidays. Once there, she feigned illness. When Williams decided to return to New Orleans, she promised that she would rejoin him in a few days, but said that she had to remain behind to see a doctor (Tr. 84). During the next few days, she spoke to Williams several times by telephone, each time indicating that she desired to remain in Port Arthur for a while longer, and refusing demands by Williams that she return to work (Tr. 85-86).

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[1] The one-volume transcript of trial has been filed with the Clerk of this Court.

In the early morning hours of January 1, 1966, the three petitioners drove in Martin's automobile to the home of the grandparents. In order to gain entry into the house, Williams cut the screens of the doors to the front porch and the house. Inside he learned from Mrs. McGill's grandmother, Mrs. Mansfield, that Mrs. McGill was asleep on a living room couch. Williams lifted her from the couch and attempted to carry her to the car (Tr. 42, 52). Mrs. McGill awoke and began screaming. The cries aroused Mr. Mansfield, who heard her scream, "Grandpa, don't let him take me out of here. They will kill me." (Tr. 52-53.) He tried to stop Williams, but was pushed aside. Williams called on petitioner Martin to assist him (Tr. 53, 88). Martin opened the front gate, and Williams threw Mrs. McGill onto the rear seat of the car (Tr. 90). They proceeded by a circuitous route to Martin's apartment in New Orleans. Both Martin and Miss Cook drove the vehicle (Tr. 94). On the way, Williams beat Mrs. McGill and threatened to kill her. At one point he put a gun to her head, but heeded Martin's advice to calm down (Tr. 88-90). In Deweyville, Texas, Mrs. McGill was compelled to make a collect telephone call to her grandparents and to tell them that she was safe (Tr. 47, 92-93).

They arrived at the New Orleans apartment at 7:30 a.m. on January 1. All three petitioners had been drinking along the way. Williams forced Mrs. McGill to have relations with him, and then fell asleep. When the others had gone to sleep, Mrs. McGill sneaked out of the apartment and obtained help. A neighbor took her to the police station, where she

gave an account of her abduction to State police officers. At approximately 9 a.m., petitioners were arrested at the apartment.[2] The arresting officers received Martin's permission to search his car. In it they found a bloodstained pajama top which Mrs. McGill had worn and other bloodied rags and tissues (Tr. 139, 152). Two days later, when Mrs. McGill was examined by a doctor, she still had bruises under both eyes and on the bridge of her nose, caused by the beatings (Tr. 188-189).

1. After their arrest in Louisiana, petitioners were returned to Texas.[3] Williams was incarcerated in the Jefferson County prison, where deputy sheriff Curnan was employed as a fingerprint technician (Tr. 158). During the routine fingerprinting of Williams, Curnan asked him his name, vital statistics and occupation. To the latter question, Williams replied that he was a "pimp" (Tr. 158-159, reprinted in full at Pet. 5-7). Citing *Jackson* v. *Denno*, 378 U.S. 368, petitioners allege that the admission of Williams' statement was reversible error, because the trial judge had failed to conduct a preliminary hearing outside the presence of the jury on the voluntariness of the admission.

---

[2] Petitioner Williams was arrested outside the apartment house after he had departed through a rear sliding glass door and had thrown Mrs. McGill's purse into some shrubbery (Tr. 139).

[3] The transcript of the removal proceedings has been filed with the Clerk of this Court. At the hearing, petitioners were represented by the same counsel who represented them at trial.

The failure to conduct such a hearing does not, in the circumstances, constitute reversible error. Until the testimony regarding Williams' occupation was adduced, there was nothing to indicate that voluntariness was an issue. The evidence that Williams' admission was freely given during routine questioning by an employee performing the ministerial duty of fingerprinting was not disputed. This was not a situation involving custodial interrogation for the purpose of eliciting incriminating evidence or a situation where a "confession" might credibly have been tainted because of the failure of a police officer to advise Williams of his rights.[4] The petition for a writ of certiorari contains nothing to indicate that Williams' statement was other than a spontaneous reply to the fingerprinter. The only reference to a possible claim of involuntariness is a comment that at the time the statement was made Williams had been in custody for a month awaiting trial (Pet. 15); this does not raise a credible issue of coercion.

Jackson v. *Denno* requires the court to make a determination of disputed facts regarding the voluntariness of a defendant's statement before the jury may consider it. That determination need not invariably be made at a preliminary hearing outside the presence of the jury. *Pinto* v. *Pierce*, 389 U.S. 31. In a situation where, as here, all of the circumstances surrounding the admission can be gleaned from the undisputed

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[4] Trial in this case occurred prior to the decision in *Miranda* v. *Arizona*, 384 U.S. 436, and the principles of that decision are therefore inapplicable here. *Johnson* v. *New Jersey*, 384 U.S. 719.

testimony of one witness to whom the statement was made (see *Jackson* v. *Denno*, 378 U.S. at 391) and the record shows that the court was satisfied that the statement was voluntarily given, a general objection that no "predicate" had been established did not require the court to suspend proceedings and conduct a needless hearing outside the jury's presence. Clearly, no harm resulted from the absence of such a hearing. See *United States* v. *Feinberg*, 383 F.2d 60, 70 (C.A. 2), certiorari denied, 389 U.S. 1044. As stated in *Feinberg*, "It is apparent that no end of justice would be served by a slavish adherence to the rule requiring a preliminary hearing." Moreover, in this case the "admission" did not go to the particular crime charged, and the admitted fact was clearly proved by other evidence.

2. The record does not sustain petitioners' claim that government counsel used unfair tactics and made inflammatory remarks during the *voir dire* and closing argument.

a. The court, in the exercise of its discretion, allowed government and defense counsel to pose questions to the panel of prospective jurors. While some of the questions and remarks of government counsel would have been more appropriate if he were making an opening statement to a jury already selected, the fact that these comments were made to the entire panel did not affect petitioners' right to a fair trial. The prosecutor's description of what the evidence might show, made for the purpose of determining whether any members of the panel were sensitive about participating in a case involving illicit sexual

activity, was not prejudicial, especially in view of the fact that the matters described were substantially proved.

b. The remarks alleged to be error in the closing argument were not objected to at trial. Even if an objection had been made, it might properly have been overruled. The closing argument was based upon the sordid facts adduced at trial. While government counsel was highly critical of petitioners' conduct, his closing remarks were no more provocative than the evidence itself. Thus, while petitioners object to the comment by government counsel that Williams was a "pimp," that designation was nothing more than the credible evidence showed him to be. The record shows that the court closely scrutinized counsel's remarks, and, on one occasion, ordered stricken, "out of an abundance of precaution," a comment that if "you turn them loose, you can just as surely sentence Carol Ann McGill to a life of prostitution as you are sitting here."

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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